

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Proceeding by the Department on its own Motion to
Implement the Requirements of the Federal
Communications Commission's Triennial Review Order
Regarding Switching for Mass Market Customers

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D.T.E. 03-60

REBUTTAL PANEL TESTIMONY OF

BROADVIEW NETWORKS, INC.,
CHOICE ONE COMMUNICATIONS OF MASSACHUSETTS INC.,
COVAD COMMUNICATIONS COMPANY AND
XO MASSACHUSETTS, INC.

MEMBERS OF THE PANEL:

Rebecca H. Sommi
Robert O. Bailey
Valerie Cardwell
Christoph Winkelmann

February 6, 2004

PUBLIC VERSION

**Rebuttal Panel Testimony of Rebecca Sommi, Robert Bailey,
Valerie Cardwell and Christoph Winkelmann
On behalf of Broadview, Choice One, Covad and XO
D.T.E. 03-60
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I. INTRODUCTION

A. BROADVIEW NETWORKS, INC.

Q. MS. SOMMI, PLEASE STATE YOUR FULL NAME AND BUSINESS ADDRESS.

A. My name is Rebecca H. Sommi. My business address is 400 Horsham Road, Horsham, Pennsylvania 19044.

Q. BY WHOM ARE YOU EMPLOYED, AND IN WHAT CAPACITY?

A. I am employed by Broadview Networks, Inc. ("Broadview"). My position is Vice President – Operations and Support.

Q. WHAT ARE THE RESPONSIBILITIES OF YOUR CURRENT POSITION?

A. My position manages regulatory/compliance functions, carrier relations with Verizon, vendor management (including contract negotiation and provisioning), and validation of all bills (including network and collocation costs). In addition, I am involved in various regulatory activities such as preparing filings participating in proceedings before various regulatory commissions including the Federal Communications Commission ("FCC"), the Massachusetts Department of Telecommunications and Energy ("Department") and other state commissions.

Q. PLEASE BRIEFLY OUTLINE YOUR EXPERIENCE IN THE TELECOMMUNICATIONS INDUSTRY.

A. I joined Broadview as Vice President of Operations Support in 1999. Prior to that, from 1982 to 1989, I held sales and marketing positions with Bell of Pennsylvania. In 1989, I joined Eastern TeleLogic Corporation as Manager of Marketing, and during my tenure my responsibilities expanded to include the carrier relations and regulatory areas. In

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1 1993, I was promoted to Director of Regulatory Affairs, with responsibility for
2 negotiating interconnection agreements with Bell Atlantic on behalf of the company
3 following the adoption of the federal Telecommunications Act of 1996, and participating
4 in the 1996 Act proceedings.

5 **Q. MS. SOMMI, WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**
6 **PROCEEDING?**

7 A. The purpose of my testimony is to present a summary of Broadview's services and a
8 description of its facilities located in Massachusetts.

9 **Q. PLEASE DESCRIBE BROADVIEW.**

10 A. Broadview was founded in 1996, and is based in New York City. Broadview is a
11 network-based electronically integrated communications provider ("e-ICP") serving
12 small and medium-sized business and communications-intensive residential customers in
13 the northeastern and Mid-Atlantic United States. Primarily, we rely on our own switches,
14 collocated facilities, and the UNE Platform ("UNE-P") to offer bundled packages of
15 local, long-distance, data, and dial-up Internet access, and high-speed Internet services to
16 our customers, which include small and medium-sized businesses and residential
17 consumers. Although Broadview provides some digital, high capacity services (*e.g.*,
18 DS1), Broadview's focus is on the analog market, which for purposes of this proceeding
19 constitutes the "mass market."

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1 **B. CHOICE ONE COMMUNICATIONS OF MASSACHUSETTS INC.**

2 **Q. PLEASE STATE YOUR FULL NAME AND BUSINESS ADDRESS.**

3 A. My name is Robert O. Bailey. My business address is 100 Chestnut Street, Suite 600,
4 Rochester, New York, 14604.

5 **Q. BY WHOM ARE YOU EMPLOYED, AND IN WHAT CAPACITY?**

6 A. I am employed by Choice One Communications Inc., the parent company of Choice One
7 Communications of Massachusetts (“Choice One”). My position is Senior Vice
8 President, Technology.

9 **Q. WHAT ARE THE RESPONSIBILITIES OF YOUR CURRENT POSITION?**

10 A. I am responsible for engineering and network operations at Choice One. In addition, I am
11 responsible for the selection of technology to be deployed by Choice One in its network.
12 Further, I am involved in various regulatory activities such as the review of certain filings
13 in proceedings before various regulatory commissions including the FCC, the
14 Department and other state commissions.

15 **Q. PLEASE BRIEFLY OUTLINE YOUR EXPERIENCE IN THE**
16 **TELECOMMUNICATIONS INDUSTRY.**

17 A. Just prior to joining Choice One, I was Vice President and Chief Technology Officer for
18 the Upstate Cellular Network (Frontier Cellular), a joint venture of Verizon Mobile and
19 Frontier Corporation where I was responsible for engineering and operations of a cellular
20 network that covered 5.5 million population units in upstate New York.

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Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

A. The purpose of my testimony is to present a summary of Choice One's services and a description of its facilities located in Massachusetts.

Q. PLEASE DESCRIBE CHOICE ONE.

A. Choice One provides facilities-based local exchange and interexchange telecommunications services in the Commonwealth of Massachusetts. Choice One currently offers service in several Massachusetts markets, including a full array of local, long distance, high-speed data (including DSL), web hosting, design and development services to small and medium sized companies in the Commonwealth.

C. COVAD COMMUNICATIONS COMPANY

Q. PLEASE STATE YOUR FULL NAME AND BUSINESS ADDRESS.

A. My name is Valerie Cardwell. My business address is 600 14th Street, NW, Suite 750, Washington, D.C. 20005.

Q. BY WHOM ARE YOU EMPLOYED, AND IN WHAT CAPACITY?

A. I am the Vice President – Government and External Affairs for Covad Communications Company ("Covad").

Q. WHAT ARE THE RESPONSIBILITIES OF YOUR CURRENT POSITION?

A. I act as a liaison between Covad's business personnel and Verizon. Further, I am involved in various regulatory activities such as the review of certain filings in proceedings before various regulatory commissions including the FCC, the Department and other state commissions.

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1 **Q. PLEASE BRIEFLY OUTLINE YOUR EXPERIENCE IN THE**
2 **TELECOMMUNICATIONS INDUSTRY.**

3 A. Before joining Covad, I was employed by Verizon Communications for 13 years. After
4 joining that company in 1985, I held various management positions including Assistant
5 Manager of Central Office Operations and Manager of Installation, Maintenance and
6 Dispatch Operations. In those positions, I oversaw the installation and maintenance of
7 services to retail customers. Specifically, I supervised several groups that were
8 responsible for the physical end-to-end installation of facilities and the correction of any
9 defects or problems on the line. In 1994, I became Director of ISDN Implementation. In
10 that position, I established work practices to ensure delivery of ISDN services to
11 customers and to address ISDN facilities issues -- issues very similar to those
12 encountered in the DSL arena.

13 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

14 A. The purpose of my testimony is to present a summary of Covad's services and a
15 description of its facilities located in Massachusetts.

16 **Q. PLEASE DESCRIBE COVAD.**

17 A. Covad is a certificated competitive local exchange carrier ("CLEC") in Massachusetts.
18 Covad is a leading national provider of Internet connectivity using digital subscriber line
19 ("DSL") technology. Covad offers DSL and T-1 services to small and medium sized
20 business and home users in Massachusetts. To offer service to its customers, Covad
21 purchases and deploys DSL equipment in Verizon's central offices and connects to the
22 end user via unbundled loops and line sharing and unbundled interoffice transport.

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1 **D. XO MASSACHUSETTS, INC.**

2 **Q. MR. WINKELMANN, PLEASE STATE YOUR FULL NAME AND BUSINESS**
3 **ADDRESS.**

4 A. My name is Christoph Winkelmann. My business address is 2147 Rt. 27 South, Edison,
5 New Jersey 08817.

6 **Q. BY WHOM ARE YOU EMPLOYED, AND IN WHAT CAPACITY?**

7 A. I am employed by XO Communications, Inc., the parent company of XO Massachusetts,
8 Inc. ("XO"), as the Director of Network Engineering. In this capacity, I am responsible
9 for engineering design and the support of transport, transmission and telemetry
10 equipment. I also prepare capital costs for potential customer opportunities and for
11 budget models.

12 **Q. PLEASE BRIEFLY OUTLINE YOUR EXPERIENCE IN THE**
13 **TELECOMMUNICATIONS INDUSTRY.**

14 A. I have been in involved in the telecommunications industry in various capacities for
15 almost 10 years. During this time, I have been responsible for both network engineering
16 and network planning functions.

17 **Q. PLEASE DESCRIBE XO.**

18 A. XO (previously known as NextLink) provides facilities-based competitive local exchange
19 and competitive access provider service in Massachusetts. XO is an active provider of
20 telecommunications and data services in Massachusetts, offering bundled local service as
21 well as dedicated voice and data telecommunications services primarily to Massachusetts
22 business customers.

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1 **Q. MS. SOMMI, MR. BAILEY, MS. CARDWELL AND MR. WINKELMANN,**
2 **WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

3 A. In the *Triennial Review Order* (“TRO”), the FCC determined that CLECs are impaired
4 without access to dedicated transport and high capacity loops at the national level. As a
5 result, incumbent local exchange carriers (“ILECs”) must continue to provide CLECs
6 with access to unbundled loops and dedicated transport at the DS1, DS3, and dark fiber
7 capacity levels on a widespread basis. Recognizing that a more granular analysis would
8 be necessary to identify exceptions to the national finding, the FCC developed a route-
9 specific and a customer location specific procedure known as the trigger analysis
10 (“triggers”). The triggers are designed to give ILECs an opportunity to rebut the national
11 finding at specific customer locations or on specific transport routes where actual
12 deployment demonstrates non-impairment at that location or route.

13
14 The purpose of our testimony is to describe the framework for evaluating Verizon’s
15 claims of non-impairment. As we will demonstrate, Verizon faces a significant burden in
16 satisfying the rigorous granular analysis of the triggers, and the Department should cast a
17 suspicious view upon Verizon’s claims that the triggers have been satisfied on a large
18 scale. The record shows that CLECs like Broadview, Choice One, Covad and XO are
19 impaired without access to unbundled loops and transport, at the DS1, DS3 and dark fiber
20 levels, throughout Massachusetts. Verizon has not put forth sufficient evidence for the
21 Department to find non-impairment under the triggers on any transport route or at any
22 customer location at this time.

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1 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

2 A. Our testimony is divided into several parts. First, we will discuss the FCC's impairment
3 analysis for loop and dedicated transport network elements, explaining the role that
4 network elements play for a facilities-based CLEC competing with the ILECs. Next, we
5 will separately discuss the self-provisioning trigger that the FCC devised for high
6 capacity loops and dedicated transport (which applies to DS3 and dark fiber only; not to
7 DS1 UNEs), and the wholesale trigger applicable to DS1, DS3 and dark fiber loops and
8 transport. We will provide a framework for interpreting the FCC triggers and analyzing
9 Verizon's claim that the triggers have been met for particular routes or at specific
10 customer locations. In closing so, we will identify certain deficiencies in Verizon's case.
11 In the following section, each carrier will address the application of the wholesale
12 triggers to its business operations in Massachusetts. Lastly, we will describe the
13 transitional issues the Department should consider upon a finding of non-impairment, in
14 order to protect CLECs and their customers from unanticipated disruption to their
15 services and rates if the Department delists any loops or transport routes.

16
17 **II. THE FCC'S IMPAIRMENT ANALYSIS**

18 **Q. PLEASE DESCRIBE THE FCC'S POLICY OBJECTIVES THAT PROVIDE THE**
19 **FRAMEWORK FOR THE TRIENNIAL REVIEW IMPLEMENTATION.**

20 A. When conducting the granular analysis required by the triggers, it is imperative that the
21 Department keep the *TRO*'s three policy objectives at the forefront. First, the *TRO*
22 continues the FCC's implementation and enforcement of the federal Act's market-

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opening requirements. This objective is critical because it recognizes the importance of providing a regulatory environment that is conducive to competition, particularly competition from facilities-based CLECs using unbundled loops and transport. Second, the *TRO* strives to apply unbundling as Congress intended: with a recognition of the market barriers faced that new entrants encounter and the societal benefits and costs of unbundling. This is critical because it recognizes the balance that is required to ensure that all consumers are able to obtain services from multiple suppliers competing for their business. This objective further recognizes the role that sharing of the network must play in delivering better services and lower costs to consumers through competition. Finally, the *TRO* establishes a regulatory foundation that seeks to ensure that investment in telecommunications infrastructure will generate substantial, long-term benefits for all consumers. The trigger analysis is intended to allow competitors to build the revenues necessary to support that infrastructure in a rational and sustainable manner.

**Q. PLEASE DESCRIBE THE FCC’S APPROACH TO DETERMINING
IMPAIRMENT FOR UNBUNDLED NETWORK ELEMENTS.**

A. The FCC applied the following standard to determine impairment: “[a] requesting carrier is impaired when lack of access to an incumbent LEC network element poses a barrier or barriers to entry, including operational and economic barriers, that are likely to make entry into a market uneconomic.” *TRO* ¶ 7. The FCC found that “[a]ctual marketplace evidence is the most persuasive and useful evidence to determine whether impairment exists.” The FCC elaborated that it is particularly “interested in the relevant market using non incumbent LEC facilities.” *Id.*

1 **Q. WHAT DID THE FCC CONCLUDE WITH REGARD TO HIGH CAPACITY**
2 **LOOPS AND DEDICATED TRANSPORT?**

3 A. Based on the record before it, the FCC made a nationwide finding of impairment for high
4 capacity loops (DS1, DS3 and dark fiber) and dedicated transport (DS1, DS3, and dark
5 fiber). *See TRO* ¶ 202 and ¶ 359 (stating that it finds “on a national level that requesting
6 carriers are impaired without access to unbundled dark fiber transport facilities ... [DS3
7 transport and DS1 transport]).” As a result, FCC rules require that competing carriers
8 have access to unbundled loops and dedicated transport everywhere unless a specific
9 route or customer location has been found to lack impairment under the trigger analysis.

10 **Q. WHAT WAS THE FCC’S BASIS FOR FINDING THAT COMPETING**
11 **CARRIERS WERE IMPAIRED WITHOUT ACCESS TO HIGH CAPACITY**
12 **LOOPS AT THE DARK FIBER, DS3, AND DS1 CAPACITY LEVELS?**

13 A. The FCC’s loop impairment analysis places substantial emphasis on two factors: whether
14 carriers can economically self-provision high capacity loops and if competitive
15 alternatives exist. The FCC based its finding that competing carriers are impaired
16 without high capacity loops at the dark fiber, DS3, and DS1 capacity levels in large part
17 on the fact that the costs to construct loops and transport are fixed and sunk. The FCC
18 stated that “[b]ecause the distribution portion of the loop serves a specific location, and
19 installing and rewiring that loop is very expensive, most of the costs of constructing loops
20 are sunk costs.” *TRO* ¶ 205. The FCC concluded that it would be extremely difficult to
21 recover these construction costs and be a viable competitor in the marketplace.

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1 The FCC found that there are substantial economic and operational barriers to deploying
2 loops. For example, the FCC found that “the cost to self-deploy local loops at any
3 capacity is great . . . and that a competitive LEC that plans to self-deploy its facilities
4 must target customer locations where there is sufficient demand from a potential
5 customer base, usually a multi-tenant premises location, to generate a revenue stream that
6 could recover sunk construction costs of the underlying loop transmission facility”
7 *TRO* ¶ 303. The FCC emphasized, however, that other obstacles to deploying high
8 capacity loops exist even if the carrier can overcome the cost issues. For example,
9 carriers encounter barriers in obtaining reasonable and timely access to the customer’s
10 premises and in “convincing customers to accept the delays and uncertainty associated
11 with deployment of alternative loop facilities.” *TRO* ¶ 303 (citations omitted).

12 **Q. WHAT WAS THE FCC'S BASIS FOR FINDING THAT COMPETING**
13 **CARRIERS ARE IMPAIRED WITHOUT ACCESS TO UNBUNDLED**
14 **DEDICATED TRANSPORT AT THE DARK FIBER, DS3, AND DS1 CAPACITY**
15 **LEVELS?**

16 A. The FCC stated that its impairment findings with respect to DS1, DS3, and dark fiber
17 transport facilities “recognize that competing carriers face substantial sunk costs and
18 other barriers to self-deploy facilities and that competitive facilities are not available in a
19 majority of locations, especially non-urban areas.” *TRO* ¶ 360 (citations omitted). The
20 FCC concluded that it would be extremely difficult to recover these costs and to be a
21 viable competitor in the marketplace. Indeed, the FCC concluded that “[d]eploying
22 transport facilities is an expensive and time-consuming process for competitors, requiring
23 substantial fixed and sunk costs.” *Id.* ¶ 371 (citations omitted). The FCC elaborated that

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1 the costs of self-deployment include collocation costs, fiber costs, costs to trench and lay
2 fiber, and costs to light the fiber. *Id.* CLECs also encounter delays in constructing
3 dedicated transport due to having to obtain rights-of-way and other permits. *Id.*

4 **Q. DID THE FCC FIND THAT THERE WAS ANY EVIDENCE OF NON-**
5 **IMPAIRMENT FOR HIGH CAPACITY LOOPS OR DEDICATED TRANSPORT**
6 **AT THE DARK FIBER, DS3, AND DS1 LEVELS?**

7 A. In making a national finding of impairment for loops and dedicated transport, the FCC
8 found that evidence of non-impairment was isolated and exceptional. As the FCC
9 explained, it made “affirmative national findings of impairment and non-impairment for
10 transport at the national level, as supported by the record.” *TRO* ¶ 394. The FCC,
11 however, found that the evidence in the record was not sufficiently detailed for it to
12 identify any specific customer locations or specific routes “where carriers likely are not
13 impaired without access to unbundled transport in some particular instances.” *Id.*
14 Therefore, it delegated to the states, “the fact-finding role of *identifying on which routes*
15 *requesting carriers are not impaired* ... when there is evidence that two or more
16 competing carriers, not affiliated with each other or the incumbent LEC, offer wholesale
17 transport service completing that route.” *TRO* ¶ 412 (emphasis added).

18
19 Evidence of non-impairment will be particularized and will vary from route to route or
20 location to location. For example, for loops, the FCC found virtually no evidence of self-
21 deployment of DS1 loops, *TRO* ¶ 298, and found "scant evidence of wholesale
22 alternatives" for DS1 loops. *TRO* ¶ 325. For transport, the FCC found that "alternative

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1 facilities are not available to competing carriers in a majority of areas." *TRO* ¶ 387.
2 Therefore, we would expect that a very small number of transport routes will require
3 close analysis in this proceeding.
4

5 Critically, the FCC required the trigger-based impairment analysis to be conducted
6 separately for DS1, DS3 and dark fiber capacities. Separate analysis is necessary because
7 actual deployment will vary not only route to route or location to location but also by
8 capacity levels, particularly for DS1 level UNEs that carriers use. One of the most
9 significant deficiencies in Verizon's trigger evidence is its failure to apply the triggers
10 separately to DS1, DS3, and dark fiber. Rather than separate applications of the triggers
11 at each capacity, Verizon relies on numerous assumptions about fiber deployment to
12 assume that the triggers are satisfied for *all* capacities wherever CLEC facilities are
13 present. Wherever CLEC fiber facilities are present, Verizon assumes that the dark fiber
14 DS3 and (where applicable) the DS1 triggers are met. This is not separate application of
15 each trigger.

16 **Q. ARE THE FCC'S IMPAIRMENT FINDINGS CONSISTENT WITH**
17 **BROADVIEW, CHOICE ONE, COVAD AND XO EXPERIENCES?**

18 A. Yes. The barriers to entry that the FCC found applicable to transport on a national basis
19 prevent the carrier members of this panel from deploying its own facilities to all customer
20 locations and on all transport routes in Massachusetts. The breadth of our networks are
21 limited, and Broadview, Choice One, Covad and XO still must rely on Verizon to
22 purchase dedicated transport to serve our customers in Massachusetts.

III. SELF-PROVISIONING TRIGGERS FOR HIGH CAPACITY LOOPS AND
DEDICATED TRANSPORT

Q. WHAT ARE THE PURPOSES OF THE FCC'S SELF-PROVISIONING
TRIGGER FOR UNBUNDLED LOOPS AND TRANSPORT?

A. The self-provisioning trigger is intended to identify those customer locations and transport routes where sufficient deployment of competitively owned facilities is present to demonstrate that *other competitors* (not the competitors that have deployed facilities) are not impaired without access to unbundled loops or transport. The self-provisioning triggers rely on *indirect* evidence -- based on proven past deployment -- to demonstrate this non-impairment. The FCC's theory is that actual deployment by similarly situated CLECs provides evidence that a CLEC without its own facilities does not face impairment.

It is important to realize that the self-provisioning trigger assumes a world where the competitors that own the existing facilities that have been deployed do *not* make them available to other competitive providers. Thus, in instances where the self-provisioning trigger is applicable, a carrier like Broadview, Choice One, Covad or XO would not be able to purchase facilities from any supplier other than the ILEC. As a result, the evidence that a self-provisioning carrier has deployed facilities must be sufficient to demonstrate that the economic and technical barriers to entry have been overcome as a general matter on the route or at the customer location. Indeed, the FCC specifically

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1 cautioned that the self-provisioning trigger must exclude “unusual circumstances unique
2 to [a] single provider that may not reflect the ability of other competitors to similarly
3 deploy.” *TRO* ¶ 329 at n.974. Verizon suggestion that the triggers should be applied in a
4 way that loops or transport routes are delisted without regard to actual commercial usage
5 and without regard to impairment should be rejected. The FCC triggers are designed to
6 be satisfied only when non-impairment exists; Verizon’s attempt to read a lesser standard
7 into the triggers is contrary to the *TRO*.

8 **Q WHAT CAPACITY LEVELS ARE SUBJECT TO THE SELF-PROVISIONING**
9 **TRIGGER?**

10 A. The self-provisioning trigger applies only to DS3 and dark fiber for both loops and
11 transport. *TRO* ¶¶ 409. DS1 loops and DS1 transport are not included under this trigger.
12 Regardless of how much self-provisioned deployment may exist on a route or at a
13 customer location, a DS1 UNE will continue to be available to a requesting CLEC. A
14 summary of the FCC’s triggers, and the capacities to which they apply, is attached as
15 LTCC Rebuttal Exhibit 1.

16 **Q. FOR THE SELF-PROVISIONING TRIGGER TO BE SATISFIED, MUST A**
17 **CLEC SELF-PROVISION THE SPECIFIC CAPACITY LEVEL IN QUESTION?**

18 A. Yes. The *Triennial Review Order* requires that the self-provisioning trigger be applied
19 separately to each capacity level. Verizon has failed to do this in its testimony. Instead,
20 Verizon assumes that all OCn facilities necessarily are channelized into DS1 and DS3
21 circuits. See Conroy/White November 14 Testimony at 40-42. This assumption is
22 incorrect. A CLEC that self-provisions at the OCn capacity level will not be capable of

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1 providing service at lower capacity levels in a given wire center if it has not deployed the
2 appropriate electronics to demultiplex the traffic at that wire center. For example, in our
3 experiences, many carriers deploy only OCn terminations in many instances, meaning
4 that they do not provision in many instances, DS3s or quite frequently do not provide
5 DS1 circuits. Evidence that the carrier has deployed at an OCn level is not adequate to
6 demonstrate that the carrier satisfies the self-deployment triggers for DS3s.

7 **Q. WHICH CARRIER HAS THE BURDEN OF PROOF IN THIS PROCEEDING?**

8 A. Verizon has the burden of proof. Specifically, Verizon has the burden of providing
9 evidence sufficient to prove that the FCC has been overcome on the transport routes for
10 which it challenges the FCC's finding of impairment. Indeed, the Department already
11 has concluded that "Verizon has the burden to prove a 'trigger case' in this proceeding."¹

12 **Q. HOW ARE CUSTOMER LOCATIONS DEFINED, FOR PURPOSES OF THE**
13 **LOOP TRIGGERS?**

14 A. For loops, the FCC's definition is "the connection between the relevant service central
15 office and the network interface device ("NID") or equivalent point of demarcation at a
16 specific customer premises." In addition, the loop must permit the CLEC to access all
17 units within a customer location, such as all tenants in a multi-tenant building or all
18 buildings in a campus environment.

¹ *Hearing Officer Ruling on Motion for Protective Treatment of Highly Sensitive Confidential Information of SBC Telecom, Inc.; Motion of WilTel Local Network, LLC for Protective Treatment of Highly Sensitive Confidential Information; and Motion of AT&T Communications of New England, Inc. for Heightened Protective of its Response to Department's Request Number 11, October 31, 2003 at 6.*

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1 **Q. HAS VERIZON CORRECTLY APPLIED THIS DEFINITION FOR THE SELF-**
2 **PROVISIONING TRIGGER?**

3 A. Verizon has not provided evidence that is particularized enough to tell. Verizon does not
4 present evidence that the CLECs it counts have access to the entire building. Instead, in
5 the Conroy/White December 19 Testimony (at 22), Verizon asserts that “it is reasonable
6 to assume” this access for a “large commercial building.” This assumption is not
7 reasonable. Competitive access providers, for example, frequently provide confidential
8 “lit buildings” lists to prospective buyers identifying where the carrier can offer service.
9 A substantial portion of the “lit buildings” on those lists identify a specific floor or, in
10 some cases a specific suite number, to which the carrier provides service. The carrier
11 does not provide access to the remaining units within the building. For example in
12 *****BEGIN PROPRIETARY*****

15 *****END**

16 **PROPRIETARY***** Thus, the fact that a carrier has deployed facilities to a building
17 does not, in and of itself, indicate that the carrier has access to the entire location.

18 **Q. HOW IS A TRANSPORT ROUTE DEFINED FOR PURPOSES OF THE**
19 **TRANSPORT TRIGGERS?**

20 A. The FCC defined a transport route as “a connection between wire center or switch ‘A’
21 and wire center or switch ‘Z’.” The FCC elaborated that “even if, on the incumbent
22 LEC’s network, a transport circuit from ‘A’ to ‘Z’ passes through an intermediate wire

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center ‘X,’ the competitive providers must *offer service* connecting wire centers ‘A’ and ‘Z,’ but do not have to mirror the network path of the incumbent LEC through wire center ‘X.’” *TRO* ¶ 401 (emphasis added). This statement, made in the context of wholesale availability equally applies to self provisioned transport. In order to offer service, a carrier must have actual facilities in place between the locations; in order to self-provisioning service, a carrier must be providing something to itself. That is, it must have *active* facilities between the A and Z points.

Q. IS VERIZON’S IDENTIFICATION OF TRANSPORT ROUTES CONSISTENT WITH THE SELF-PROVISIONING TRIGGER?

A. No. Verizon performed a rudimentary counting exercise, in which it simply identifies all of the collocation arrangements for a given CLEC, confirms that fiber optic facilities are present in the collocation arrangement, then declares that transport routes exist between each collocation arrangement. This approach is deficient, in that it presents no evidence that the CLEC in question is providing transport service *between* the two ILEC wire centers, which is the FCC requirement. For example, CLECs generally use collocation arrangements to aggregate unbundled loops that are destined for the CLEC’s switch. There is a high probability that the equipment and fiber optics installed in a collocation arrangement are not being used to provide transport between two ILEC wire centers, but instead are being used to carry traffic from a wire center to a CLEC switch. This latter use is not “transport” within the meaning of the trigger. The FCC specifically limited transport to routes between two ILEC wire centers (or an ILEC wire center and an ILEC switch).

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1 To count as a transport route for purposes of the triggers, each collocation arrangement in
2 question must be used as an endpoint for the transport of traffic between the two ILEC
3 wire centers. The FCC made this clear when it rejected ILEC proposals to use the
4 existence of special access pricing flexibility to identify non-impairment. The FCC
5 explained that the special access pricing flexibility standard relied on the existence of
6 alternative carrier collocations, and that, “the measure may only indicate that numerous
7 carriers have provisioned fiber from their switch to a single collocation rather than
8 indicating that transport has been provisioned to transport traffic between incumbent LEC
9 central offices.” *TRO* ¶ 397. Unless traffic is being routed between the two central
10 offices, the facilities do not constitute a transport route for purposes of the triggers.

11
12 As a result of Verizon’s overbroad route definition, it substantially overstates the number
13 of transport facilities deployed by competitive carriers. Generally, the CLECs that
14 responded to the Department’s information requests reported far fewer transport routes
15 than Verizon’s collocation-based test yields. For example *****BEGIN**
16 **PROPRIETARY*****

17
18 *****END PROPRIETARY***** yet Verizon identified these
19 carriers as satisfying the self provisioning trigger. In addition, *****BEGIN**
20 **PROPRIETARY*****

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1 *****END PROPRIETARY***** The Department should rely on the
2 CLEC data to identify the routes on which competitive carriers have deployed transport
3 facilities.

4 **Q. WHAT EVIDENCE MUST VERIZON SUBMIT TO MEET THE FCC'S**
5 **REQUIREMENT OF OPERATIONAL READINESS FOR THE SELF-**
6 **PROVISIONING TRIGGER?**

7 A. While the existence of CLEC facilities obviously is a prerequisite to the provision of
8 service, that alone does not reflect whether the equipment can be used to provide the
9 service to satisfy the trigger, whether the CLEC can provide service at the requisite
10 capacity level, or whether CLEC has performed the necessary engineering, provisioning,
11 and administrative tasks to ensure that service can be provided. The only reliable way of
12 demonstrating that a CLEC is operationally ready under the self-provisioning trigger is to
13 produce evidence that the CLEC is actually providing service at the customer location or
14 on the given transport route. If the CLEC facilities are in use providing the requisite
15 capacity of service and if the CLEC is able to provision additional circuits using existing
16 equipment and facilities, then it is operationally ready to provide the service. This is
17 consistent with the FCC's requirement that evidence be provided that CLECs are *serving*
18 customers using self-provisioned loop facilities, and that CLECs *offer service* between
19 two wire centers on a given transport route. *See, e.g.,* 47 C.F.R. §§ 51.319(a)(5)(1)(A),
20 51.319(e)(2)(i)(A).

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1 **Q. FOR PURPOSES OF APPLYING THE TRIGGERS, WHICH FACILITIES**
2 **COUNT AS "OWNED FACILITIES"?**

3 A. In order for facilities to qualify for purposes of the triggers, the carrier must have
4 deployed its "own facilities". There are two ways that a carrier can have ownership over
5 the facilities: the carrier can have legal title to the facilities or the carrier can have a
6 "long-term" (*i.e.*, 10 years or more) dark fiber IRU, if the fiber is lit by the qualifying
7 carrier by attaching its own optronics to the facilities. If the carrier does not use its own
8 facilities, then the carrier cannot count for purposes of the self-provisioning trigger.

9 **Q. WHICH FACILITIES DO NOT COUNT AS "OWNED FACILITIES"?**

10 A. Facilities obtained from other sources such as through special access arrangements,
11 UNEs, capacity leases (unless they are long term IRUs), and all third-party provided
12 facilities fail to qualify as "owned facilities." The FCC specifically emphasized that a
13 CLEC "using the special access facilities of the incumbent LEC or the transmission
14 facilities of the other competitive provider ... would *not* satisfy the definition of a self-
15 provisioning competitor for purposes of the trigger." *TRO* ¶ 333.

16
17 In addition, the triggers are designed to prevent double counting of facilities. Therefore,
18 for purposes of the self-provisioning test, a carrier may not be using "facilities owned or
19 controlled by one of the other two providers" *TRO* ¶ 333. For example, if Carrier A
20 has deployed facilities to a building or on a transport route and Carrier B purchases
21 service from Carrier A, only one self-provisioner is present on the route. Carrier B does
22 not own the facilities it uses to provide service to its customers.

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Q. IF A CARRIER SATISFIES THE SELF-PROVISIONING TRIGGER, WILL IT AUTOMATICALLY QUALIFY AS AN ELIGIBLE PROVIDER UNDER THE COMPETITIVE WHOLESALE FACILITIES TRIGGER OR VICE VERSA?

A. No. The FCC emphasized that the triggers are separate and distinct. The purpose of the self-provisioning trigger is to determine through actual experience whether similarly situated CLECs can deploy their own facilities in order to serve their own customers. In contrast, the wholesale facilities trigger examines whether the provider makes its facilities available to other carriers on a widely available basis. Self-provisioners that do not provide service to other carriers do not qualify under the wholesale trigger. *See TRO* ¶ 414 (wholesale test does not count facilities owned by a competitor unwilling to offer capacity on a whole basis). Similarly, although some wholesale carriers also may self-provide facilities to serve their own customers, others may not provide any end user service and thus cannot be self-provisioners under the triggers. *See TRO* ¶ 406 & n.1256 (self-provisioner must be operationally ready to provide transport; carrier must “remain in operation” on the route). For example, an entity that operates only as a “carrier’s carrier” does not qualify as a self-provisioner under the FCC’s triggers. Verizon relies on several carriers including *****BEGIN PROPRIETARY*****

*****END PROPRIETARY***** as self providers. There is no evidence that these carriers provide end user service, and they should be removed from consideration in any self provisioning trigger.

IV. WHOLESALE TRIGGERS FOR DEDICATED TRANSPORT

Q. WHAT IS THE PURPOSE OF THE FCC'S WHOLESALE TRIGGER FOR HIGH CAPACITY LOOPS AND DEDICATED TRANSPORT?

A. The wholesale trigger provides the ILECs an opportunity to demonstrate that there is no impairment for a specific customer location or transport route by identifying locations and routes for which there are a sufficient number of alternative providers offering wholesale loops and transport services using their own facilities. The underlying premise of the wholesale trigger is that when a working wholesale market with multiple alternative sources of supply exists for loops or transport, then CLECs would not be reliant on receiving the element from the ILEC as a UNE.

Q. WOULD A WORKING WHOLESALE MARKET BE BENEFICIAL TO BROADVIEW, CHOICE ONE, COVAD AND XO?

A. Yes, as long as the alternative facilities are available as more than a theoretical possibility. For a viable competitive wholesale market to exist, not only must competitive facilities be deployed, but also the requesting carrier must be able to use these facilities to replace ILEC UNEs in ordinary applications. Equally important, the alternative facilities must work seamlessly with other components of a CLEC network, including ILEC-supplied UNEs. For example, it is conceivable that as a result of application of the triggers, a CLEC will purchase a UNE loop from the ILEC and competitive transport from an alternative vendor, or will purchase a competitively supplied loop in conjunction with UNE transport. Moreover, CLECs may even face situations where DS1 loops and transport are ordered as UNEs, but DS3 loops or

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1 transport to the same location or along the same route are ordered through competitive
2 suppliers. These permutations make it imperative that *all barriers* to a competitive
3 wholesale market be eliminated, including any barriers created by Verizon's ordering
4 processes for UNEs.

5 **Q. WHAT CAPACITY LEVELS ARE SUBJECT TO THE WHOLESALE TRIGGER**
6 **FOR HIGH CAPACITY LOOPS AND TRANSPORT?**

7 A. Wholesale transport at the DS1, DS3 and dark fiber levels are subject to the wholesale
8 triggers.

9 **Q. WHAT MUST VERIZON DEMONSTRATE TO SATISFY THE WHOLESALE**
10 **PROVISIONING TRIGGER FOR HIGH CAPACITY LOOPS AND DEDICATED**
11 **TRANSPORT?**

12 A. The wholesale facilities trigger examines whether there are competing providers offering
13 a bona fide product on the specific route. To satisfy the wholesale facilities trigger, the
14 Department must find that there are *two or more* competing providers that have deployed
15 their own high capacity loop or dedicated transport facilities, that are operationally ready
16 to use those transport facilities and are willing to provide transport over those facilities on
17 a "widely available wholesale basis" to other carriers.

18
19 In addition to producing the evidence discussed in connection with the self-provisioning
20 trigger, Verizon also must demonstrate that the alternative provider is actually offering
21 wholesale service for the specific route or customer location at the requisite capacity
22 level, has equipped its network to facilitate numerous wholesale customers, and has
23 developed the appropriate systems and procedures to manage a wholesale business.

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Q. HOW DOES THE REQUIREMENT OF OPERATIONAL READINESS APPLY TO THE WHOLESALE TRIGGER?

A. In addition to the requirements of the self-provisioning trigger, Verizon must demonstrate that the wholesale provider is operationally ready and willing to provide high capacity loop and transport to other carriers at each capacity level. At a minimum, Verizon must show that each wholesale carrier:

- Has sufficient systems, methods and procedures for pre-ordering, ordering, provisioning, maintenance and repair, and billing;
- Possesses the ability immediately to provision wholesale high capacity loops to each specific customer location identified or dedicated transport along the identified route;
- For loops, has access to an entire multi-unit customer premises;
- Is capable of providing transport at a comparable level of capacity, quality, and reliability as that provided by the ILEC;
- For transport, is collocated in each central office at the end point of each transport route;
- Has the ability to provide wholesale high capacity loops and transport in reasonably foreseeable quantities, including having reasonable quantities of additional, currently installed capacity; and
- Reasonably can be expected to provide wholesale loop and transport capacity on a going-forward basis.

Q. WHAT DOES "WIDELY AVAILABLE" MEAN FOR THE WHOLESALE FACILITIES TRIGGER?

A. To be widely available, service must be made available on a common carrier basis, for example, through a tariff or standard contract. The fact that a carrier may have provided service to only one or a few other carriers on a route is not sufficient, unless the carrier also is willing to provide comparable service to other carriers. *See TRO ¶ 414* (trigger

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1 does not count competing carriers that are not willing to offer capacity on their network
2 on a wholesale basis). Moreover, an offer to negotiate an individualized private carriage
3 contract does not constitute service being widely available. In addition, each carrier
4 identified as a wholesale provider must be able "immediately to provide" wholesale
5 service. 47 C.F.R. § 51.319(e). If the carrier is required to construct facilities in order
6 for the service to be made available, then the service is not widely available. Similarly, a
7 service is not widely available if the carrier is unable to interconnect with its wholesale
8 customers because sufficient facilities have not been terminated in the relevant central
9 office or if insufficient collocation space is present to accommodate new CLECs in the
10 central office.

11 **Q. WHAT DOES IT MEAN TO HAVE REASONABLE ACCESS TO THE**
12 **WHOLESALE PROVIDER?**

13 A. Requesting carriers must be able to access terminations in the collocation arrangement at
14 nondiscriminatory rates, terms, and conditions in accordance with FCC and state rules.
15 In addition, ILECs must provide requesting carriers with adequate terminations at cost-
16 based rates, and must enable sufficient capacity expansion. If carriers are not able to
17 cross connect at the ILEC central office, then they cannot obtain access to the wholesale
18 provider's facilities.

19
20 As we stated above, for a competitive wholesale market to be in place, there must be
21 proper systems and processes for ordering and provisioning. In addition, carriers must be
22 able to obtain the service at nondiscriminatory rates and on nondiscriminatory intervals.

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1 Requesting carriers also must be able to order circuits to terminate in all qualified
2 wholesale providers' collocation space. The Department should inquire whether the
3 ILEC's OSS is capable of handling ARSs that are provisioned to a wholesale provider's
4 facilities.

5 **Q. DOES VERIZON PROVIDE ANY EVIDENCE ON THESE POINTS?**

6 A. No. Instead of providing evidence that the wholesale providers it identifies are
7 operationally ready to provide wholesale services and doing so on a widely available
8 basis, such as by demonstrating actual wholesale provisioning on each route, Verizon
9 waters down the impairment standard and asks the Department to *assume* wholesaling
10 exists from the flimsiest statements made in applicable contexts. Verizon has not
11 introduced any evidence to show that these carriers have systems, methods and
12 procedures in place to order and provision wholesale service, nor has Verizon introduced
13 any evidence to show that the carrier has a reasonable amount of capacity to offer
14 wholesale facilities to other carriers. Similarly, Verizon does not address whether a
15 carrier's wholesale offerings are "widely available" or whether it has the capability to
16 "immediately provide" service if requested by a competitive carrier. Because Verizon
17 carries the burden of proof in its "trigger case" to demonstrate satisfaction of the triggers,
18 its failure to produce evidence on these issues is fatal to Verizon's challenge to the
19 nationwide impairment findings.

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1 **Q. DO VERIZON’S CRITERIA FOR DEMONSTRATING THAT A CARRIER IS A**
2 **WHOLESALE PROVIDER SATISFY ITS BURDEN OF PROOF?**

3 A. No, Verizon does not satisfy its burden of proof. The criteria used by Verizon for
4 demonstrating that a carrier is a wholesale provider in Massachusetts do not accurately
5 reflect what a carrier does in Massachusetts.

6
7 For example, Verizon’s reliance on a carrier’s inclusion as a “supplier” on the Universal
8 Access website does not provide evidence that a carrier is a wholesale provider in
9 Massachusetts. First, there is no indication what services are being provided by the
10 carrier to Universal Access or what capacity the service is being offered. Second, there is
11 no indication if the services offered are being done so in Massachusetts. Simply being
12 listed as a “supplier” on the Universal Access website should not qualify a carrier as a
13 wholesale provider in Massachusetts.

14
15 Similar criticism applies to the use of a carrier’s website for identifying a carrier as a
16 wholesale provider in Massachusetts. Websites contain promotional materials, broad
17 statements of capabilities and general descriptions of offerings and services a carrier may
18 offer in any state they are certificated to provide service in. Generally, websites are not
19 state, route or customer location specific. A carrier stating it offers services to carriers
20 without also stating in which states, on which routes or at which customer locations,
21 should not be used to satisfy the fact specific wholesale provider triggers. We do not rely

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1 on these statements when examining transport or loop alternatives. Instead, we must ask
2 the carrier specifically about the particular route or location that we considering.

3
4 In addition, reliance on the New Paradigm CLEC 2003 Report (“New Paradigm”) as
5 support that a carrier is a wholesale provider of dedicated access transport in
6 Massachusetts is also flawed. First, dedicated access transport is not defined in the New
7 Paradigm report. As such, it is unclear what precisely the New Paradigm report was
8 considering dedicated access transport when it reported that a carrier offers such a
9 service. Like carrier websites, the New Paradigm report does not break down service
10 offerings by state, route or customer location. What a carrier might do in states other
11 than Massachusetts is not relevant to this proceeding and should not be used to satisfy the
12 fact based triggers. Moreover, in only three of the ten carriers identified by Verizon as
13 wholesale providers *****BEGIN PROPRIETARY*****

14 *****END PROPRIETARY***** were even included in the New Paradigm report.
15 Out of the remaining seven *****BEGIN PROPRIETARY*****

16 *****END**
17 **PROPRIETARY***** did not, to the best of our knowledge, even provide responses to
18 the DTE’s information requests. This lack of carrier provided information, when taken
19 into consideration with the inherent flaws in Verizon’s reliance on the third party sources,
20 exposes a “heads I win, tails you lose” mentality behind Verizon’s evidence of wholesale
21 service.

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1 **Q. HAS VERIZON PRESENTED SUFFICIENT EVIDENCE THAT COMPETITIVE**
2 **FACILITIES ARE AVAILABLE AT WHOLESALE?**

3 A. No. A key element of the Department's fact-finding function is to properly identify the
4 relevant wholesale providers of loops and transport, and to ensure that Verizon is not
5 overly broad in its identification of wholesale providers. As stated above, Verizon has
6 not presented customer location-specific or route-specific evidence that any of the
7 wholesale providers offer service on the routes or at the locations that it claims satisfy the
8 wholesale trigger.

9
10 Broadview, Choice One and XO, through the Loop/Transport Carrier Coalition, filed a
11 Motion to Strike Verizon's wholesale evidence because it does not present route-specific
12 evidence that wholesale services are available. See Motion to Strike, D.T.E. 03-60, filed
13 January 13, 2004. For the reasons explained in that Motion, Verizon's evidence should
14 be stricken from the record.

15
16 In addition, the FCC triggers require that evidence of wholesale availability be presented
17 for each level of capacity. This, too, Verizon failed to present. As we explained in the
18 context of the self-provisioning triggers, it is not reasonable to assume that all OCn
19 facilities have the proper multiplexing equipment installed to provide DS3 and DS1
20 services. This is particularly true with respect to wholesale services, where carriers
21 frequently offer only certain capacities at wholesale.

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1 **Q. WHAT INFORMATION SHOULD THE DEPARTMENT RELY UPON IN**
2 **MAKING ITS DETERMINATIONS AS TO WHETHER A CARRIER IS A**
3 **WHOLESALE PROVIDER?**

4 A. The only way for the Department to determine whether or not a carrier is a wholesale
5 provider in Massachusetts is to rely upon the carrier's responses submitted in this
6 proceeding. The carriers themselves are the best source of evidence as to whether they
7 offer wholesale services on a specific route or at a specific customer location in
8 Massachusetts.

9
10 If one were to closely analyze the information that the carriers reported in discovery
11 about their activities, it would demonstrate that, contrary to Verizon's assertions in its
12 Direct and Supplemental Testimony, there are few transport routes in Massachusetts that
13 even potentially could satisfy all of the required elements of the triggers to justify a
14 finding of non-impairment on any route at this time. This assertion is supported in LTCC
15 Rebuttal Exhibit 2. Exhibit 2 compiles discovery information on the transport routes
16 reported by CLECs that were identified as trigger candidates under either the self
17 provisioning trigger, wholesale provisioning trigger or both in Verizon's Attachments
18 3.A, 3.B, 3.C, 3.E and 3.F to its December 19 Supplemental Testimony. The Department
19 should use this information in the docket to deny Verizon's claims at this time. Verizon
20 would be free to come back with additional evidence in subsequent proceedings
21 authorized by the Commission, but should not further burden the 9-month docket with its
22 loop and transport claims.

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A. Exhibit 2 was generated from the responses provided by the CLECs to the Department's information requests regarding the deployment of dedicated transport facilities, and the relevant responses provided to discovery requests submitted by other involved parties such as MCI, the Joint Parties, Conversent and Verizon. Specifically, Exhibit 2 compiles responses from *****BEGIN PROPRIETARY*****

In addition, responses of *****BEGIN PROPRIETARY*****

these carriers reported in their responses to the Department's information requests that they did not deploy dedicated transport facilities between two ILEC wire centers in Massachusetts.

The CLECs' own data provides a starting point for conducting the fact-based inquiry required under the triggers. As explained above dedicated transport under the FCC triggers has a specific meaning that is narrower than casual usage of the term transport: Transport under the *TRO* must be used to carry dedicated traffic between two incumbent local exchange carrier ("ILEC") wire centers. The responding CLECs indicated they do not have transport routes that satisfy this definition of transport.

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1 yet to the best of our knowledge, none of these carriers responded to the Department's
2 information requests. In fact, while Verizon identified these carriers as satisfying either
3 the self provisioning or the wholesale provisioning trigger, Verizon provided no evidence
4 from the carriers themselves verifying its claim.

5
6 Verizon's identification of these carriers as trigger candidates is problematic. In essence,
7 Verizon is asking the Department to base its analysis solely on Verizon's assertion that
8 these carriers offer wholesale dedicated transport in Massachusetts and not what the
9 carrier states it offers.

10 **Q. SHOULD THE DEPARTMENT CONSIDER THE CARRIER WHO DID NOT**
11 **PROVIDE RESPONSES BUT ARE IDENTIFIED AS TRIGGERS BY VERIZON**
12 **IN ITS ANALYSIS OF WHOLESALE DEDICATED TRANSPORT?**

13 A. No. As previously stated, the carriers are the best source of information as to whether
14 they offer services on a wholesale basis, including dedicated transport in Massachusetts.
15 In light of the problems with Verizon's reliance on carrier websites, the New Paradigm
16 report and being listed as a "supplier" on the Universal Access website, the Department
17 should not consider these carriers, absent responses directly from them, which are not the
18 record of this case.

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1 **Q. IS BROADVIEW A WHOLESALE PROVIDER OF LOOP FACILITIES IN**
2 **MASSACHUSETTS?**

3 A. No, Broadview is not a wholesale provider of loop facilities in Massachusetts.

4 **B. CHOICE ONE**

5 **Q. HAS CHOICE ONE PROVIDED INFORMATION ABOUT ITS SERVICES AND**
6 **FACILITIES IN DISCOVERY IN THIS CASE?**

7 A. Yes, Choice One has responded to discovery requests by the Department and numerous
8 other carriers such as MCI, the Joint Parties (UNE-P Carriers), Conversent and Verizon,
9 and in doing so, has provided information about its facilities and the services that it
10 offers.

11 **Q. DOES CHOICE ONE HAVE TRANSPORT FACILITIES IN MASSACHUSETTS?**

12 A. No, Choice One does not have transport facilities in Massachusetts.

13 **Q. IS CHOICE ONE A WHOLESALE PROVIDER OF LOOP FACILITIES IN**
14 **MASSACHUSETTS?**

15 A. No, Choice One does not provide its own loop facilities at wholesale in Massachusetts

16 **C. COVAD**

17 **Q. HAS COVAD PROVIDED INFORMATION ABOUT ITS SERVICES AND**
18 **FACILITIES IN DISCOVERY IN THIS CASE?**

19 A. Yes, Covad has responded to discovery requests by the Department, and in doing so, has
20 provided information about its facilities and the services that it offers.

21 **Q. DOES COVAD HAVE TRANSPORT FACILITIES IN MASSACHUSETTS?**

22 A. No, Covad does not have transport facilities in Massachusetts.

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1 **Q. IS COVAD A WHOLESALE PROVIDER OF LOOP FACILITIES IN**
2 **MASSACHUSETTS?**

3 A. No, Covad does not provide its own loop facilities at wholesale in Massachusetts.

4 **D. XO**

5 **Q. HAS XO PROVIDED INFORMATION ABOUT ITS SERVICES AND**
6 **FACILITIES IN DISCOVERY IN THIS CASE?**

7 A. Yes, XO has responded to discovery requests by the Department and numerous other
8 carriers such as MCI, the Joint Parties (UNE-P Carriers), Conversent and Verizon, and in
9 doing so, has provided information about its facilities and the services that it offers.

10 **Q. DOES XO HAVE TRANSPORT FACILITIES IN MASSACHUSETTS?**

11 A. Yes, XO has transport facilities in Massachusetts, which it identified in response to the
12 above-mentioned discovery responses.

13 **Q. IN GENERAL, DOES XO PROVIDE DEDICATED TRANSPORT ON A**
14 **WHOLESALE BASIS TO THIRD PARTIES IN MASSACHUSETTS?**

15 A. No. As I stated above, XO has transport facilities in Massachusetts. XO offers a variety
16 of services in Massachusetts, some of which are provided to other telecommunications
17 carriers. Although it is possible that XO may have provisioned a transport circuit
18 between two central offices, XO does not make such services widely available on a
19 wholesale basis as required under the FCC's trigger analysis.

VI. TRANSITIONAL ISSUES

Q. IF A STATE REGULATORY AUTHORITY FINDS THAT A TRIGGER IS SATISFIED, WHAT HAPPENS NEXT?

A. In this case, if the Department finds that requesting carriers are not impaired without access to unbundled transport on any particular route or high capacity loops at a specific customer location then the Department must establish an "appropriate period for competitive LECs to transition from any unbundled loops or transport that the state finds should no longer be unbundled." *TRO* ¶ 417.

Q. WHAT ISSUES ARE INVOLVED IN ESTABLISHING AN APPROPRIATE TRANSITION PERIOD?

A. A transition period is required for two reasons. First, CLECs made specific business decisions to serve or not serve customers in reliance on the availability of UNE transport on the relevant transport route. CLECs must be able to continue to offer service to these customers after a finding of non-impairment. This consideration is essential because services to enterprise customers are contract-based and generally do not allow the provider to terminate or modify the contract due to sudden cost increases. Without a transition period, CLECs and their customers would face significant disruptions to their services if access to unbundled loops were disconnected or migrated to higher priced services. A transition is needed to prevent rate shock to customers receiving service using UNE arrangements.

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1 Second, a CLEC cannot modify its network overnight. A litany of business arrangements
2 will have to be negotiated, modified and implemented if a state regulatory authority
3 commission determines that one of the triggers has been satisfied. For example, if the
4 Department were to determine that the self-provisioning trigger were satisfied,
5 Broadview, Choice One, Covad and XO would have to deploy their own facilities on the
6 transport route in question. Deployment of fiber is a time-consuming experience. Any
7 transition period should build in sufficient time to enable the CLEC to make use of the
8 alternatives that underlie the finding of non-impairment.

9 **Q. ARE THERE ADDITIONAL TRANSITION ISSUES THE DEPARTMENT**
10 **SHOULD CONSIDER?**

11 A. Yes. The Department should ensure that Verizon maintains an adequate process for
12 ordering combinations of loops and transport, in situations where one or both network
13 elements of the combination have been delisted. In the *TRO*, over ILEC objections, the
14 FCC specifically stated that competing carriers are permitted to continue to have access
15 to combinations of loops and transport regardless of whether one of the items has been
16 delisted. *See TRO* ¶ 584. Similarly, the Department should ensure that Verizon has
17 adequate billing processes and procedures in place for CLECs to purchase delisted
18 network elements, whether individually or in combination.

19 **Q. HOW SHOULD TRANSITION ISSUES BE ADDRESSED?**

20 A. Establishing an appropriate transition period is a complex task. Ideally, these issues
21 should be addressed in a phase of this proceeding that immediately follows the finding of
22 non-impairment. If the Department follows such a procedure, Verizon should be

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1 prohibited from billing special access rates to CLECs while the Department receives
2 evidence on the elements necessary to protect customers from rate shock and to enable
3 CLECs to build replacement facilities and/or to migrate to the network facilities of non-
4 ILEC providers. In the event an interim transition is desired, we recommend the
5 minimum components described below.

6
7 The Department could develop a multi-tiered transition process such as the one
8 applicable to mass-market switching. First, there should be a transition period during
9 which CLECs may order new UNEs for locations and routes where the Department finds
10 a trigger is met. This period should be a minimum of nine months in order to enable a
11 CLEC to continue to offer competitive service to new customers while it pursues
12 alternatives available to it. Second, CLECs should have a transition period for existing
13 customers served by UNE arrangements where non-impairment subsequently is found.
14 The three year transition process established for customers served by line sharing
15 arrangements may provide a useful model for this purpose. All loop and transport UNEs
16 made available during these transition periods should continue to be made available at
17 TELRIC rates until migrated.

18 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

19 **A.** Yes, it does.

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EXHIBIT 1

Summary of FCC Triggers

EXHIBIT 2

Analysis of Dedicated Transport

(PUBLIC)

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EXHIBITS

EXHIBIT 1: SUMMARY OF FCC TRIGGERS

EXHIBIT 2: ANALYSIS OF DEDICATED TRANSPORT